ACIL

The Association of Independent Scientific,
Engineering and Testing Firms

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May 31, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Subject: Notice of Proposed Rule Making Dated Feb. 7, 1995
ET Docket No. 95-19

Dear Sir:

I am writing you as Chairman of the ACIL EMC Subcommittee to express the opinions and concerns of our organization with regards to the above referenced Notice of Proposed Rule Making (NPRM).

ACIL, (Formally the American Council of Independent Laboratories), represents over 400 nationwide independent engineering organizations and testing laboratories who address the conformity assessment needs of a wide range of industry sectors including, telecommunications, consumer electronics, medical devices and information technology equipment. The EMC Subcommittee, part of ACIL's Conformity Assessment Section, represents 15 of the nation's leading EMC and OSHA NRTL testing laboratories. The ACIL EMC Subcommittee has been and remains the industry's leading spokesman through its consistent consensus building efforts. These efforts have included joint sponsoring of the 1991 N.I.S.T./ACIL/AEA European Community EMC Related Workshop and our current secretariat role regarding the Dept. of Commerce's Technical Sectoral Advisory Committee on EMC and Telecom related to the European Union. ACIL also provides a federal appointed technical expert, Walter Poggi, to the ongoing U.S./European Union Mutual Recognition Agreement trade negotiations.

ACIL supports the Commission proposal for the use of Manufacturer's Declarations of Conformity (DOC), **PROVIDING** that such rule making also mandates the formal (NVLAP) accreditation of all **INDEPENDENT** testing laboratories providing data in support of such DOCs. Without the laboratory accreditation component we can not support the concept of a manufacturer's DOC.

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We make these comments based on the following principles:

INTERNATIONAL HARMONIZATION

ACIL supports the harmonization of U.S. based conformity assessment systems with recognized international systems. Such harmonization leads to the elimination of duplication in testing, approvals and accreditations, resulting in cost savings both for manufacturers and laboratories. Product approval based on a manufacturer's DOC is rapidly becoming more and more the norm in international conformity assessment systems. A review of the European Community's system shows how the manufacturer's DOC concept can be effectively used in many areas. Currently most of the ITE equipment related Directives (EMC & Low Voltage) are based on DOCs. Even the Telecom Terminal Equipment Directive and the Medical Device Directive have some provisions for a manufacturer's DOC. **HOWEVER**, Notified and Competent Bodies, which can be viewed as akin to the accredited laboratories the Commission is suggesting, are also an important part of the EC system. Also included are formal subcontracting procedures for both Notified and Competent Bodies which mandate formal laboratory accreditation of labs wishing to subcontract with such bodies. We would suggest that this structure has in effect mandated a laboratory accreditation scheme even for Directives based solely on manufacturer's DOCs. Accordingly we believe that the Commission is correct to include the elements of laboratory accreditation in this NPRM.

PROTECTION OF THE U.S. MARKETPLACE

Although we believe and trust that all prudent and responsible U.S. manufacturers can be trusted to fulfill all of the requirements of a system based on DOCs, it would appear foolish to believe that all foreign manufacturers would be as committed to compliance. Considering the potential for ITE Equipment to operate in conjunction with personal safety related equipment such as medical devices, the need for marketplace protection is clear. Either through ignorance or indifference it is safe to assume that some foreign manufacturers may attempt to circumvent the system. Since this is most likely to occur by smaller less equipped manufacturers, the mandated use of an accredited laboratory is a form of checks and balances for the system. Assuring that a foreign laboratory "even" exists and that it is capable of providing the required testing is certainly a step in the right direction in assuring some level of confidence in the products being sent to our marketplaces and is consistent with the controls put in place by many of our trading partners.

SPECIFIC NPRM COMMENTS

Section 6 - With regards to the DOC itself, we would recommend that if the testing stated on the DOC was performed by an independent laboratory, that laboratory should be listed on the DOC. Clearly manufacturers are assuming a certain degree of liability by their generation of a DOC. In support of our customers, i.e. manufacturers, we believe that listing the laboratory responsible for the testing is only logical.

Section 8 - Based on what is currently being done in various international systems using DOCs, we do not see a clear "present" need for accreditation of manufacturer's laboratories. A manufacturer will be attesting to his laboratory's capabilities each time he generates and signs a DOC, accordingly the need for accreditation is not as great as it is with the independent laboratory who is assuming no liability for the product attested to on a DOC.

With regards to "alternate methods of accrediting laboratories", we would offer the following. First and foremost is the fact that we at ACIL support the concept of competition in any accreditation situation. Clearly the current NVLAP program is the most established in this area and the NVLAP accreditation should be used as a model. However other accreditation agencies such as the American Association for Laboratory Accreditation (A2LA) should be able to also administer an acceptable EMC accreditation program. We would suggest that any accreditation program, which is based on current international ISO standards, be accepted, **providing they meet the requirements of the FCC.** Further we would strongly encourage greater efforts on the part of NVLAP, the Commission and any other acceptable U.S. accrediting body, to enter into Memorandums of Understandings (MOU) with other international accrediting bodies in order to address the accreditation of foreign laboratories.

Some have suggested that the Commission's proposed accreditation requirement will be viewed as a trade barrier. We would respectively disagree. If the current NVLAP accreditation system was closed to foreign laboratories, if the Commission did not encourage MOU's between U.S. accrediting bodies and their foreign counterparts, then we would be creating trade barriers. Much like the EC has done by not allowing Notified or Competent Bodies to exist outside of the EC. U.S. policy has always been based on the

concept of "National Treatment" and from what we see the Commission's NPRM would continue that concept with foreign laboratories having the same opportunity to be accredited as would U.S. based laboratories.

We at **ACIL** thank you for the opportunity to comment on this important rule making decision and hope that these comments will help the Commission in formulating rule making which will address the needs of all, the Commission, manufacturers, laboratories and the U.S. consumer.

Very truly yours,

ACIL

Walter A. Poggi
Chairman, EMC Subcommittee

WAP/ap